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FILED

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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRIS LUSBY TAYLOR, NANCY A. PEPPLE-
GONSALVES, SUSAN SWINTON, DAVID
KESSELMAN (deceased), WILLIAM J.
PALMER (deceased), DON H. PERRI,
JENNIFER WALSH, MARK MacAULEY and
MARY A. STEELE,

On behalf of themselves and other persons
similarly situated,

Plaintiffs,

vs.

JOHN CHIANG, individually and in his capacity
as STATE CONTROLLER OF THE STATE OF
CALIFORNIA and RICHARD CHIVARO,
individually,

Defendants.

No.: CIV. S-01-2407 JAM GGH

JAM
~~PROPOSED~~ ORDER GRANTING
MOTION TO DISMISS PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6)

Hearing:

Date: October 3, 2012

Time: 9:30 a.m.

Courtroom: 6

(The Honorable John A. Mendez)

[PROPOSED] ORDER GRANTING MOT. TO
DISMISS PURSUANT TO FED. R. CIV.
PROC. 12(b)(6) – NO. CIV. S-01-2407 JAM GGH

1 Plaintiffs' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6)
2 came on for hearing on October 3, 2012, at 9:30 a.m. in Courtroom 6 of the United States District
3 Court, Eastern District, the Honorable John A. Mendez, presiding. Plaintiffs Chris Lusby Taylor, et al.
4 appeared by and through their counsel, Robert A. Buccola, C. Brooks Cutter, Lori M. Porter, and
5 William W. Palmer. Defendants John Chiang, et al. appeared by and through their counsel, Robin B.
6 Johansen and Margaret R. Prinzing of Remcho, Johansen & Purcell, LLP.

7 The Court, having reviewed the record, having read and considered the supporting and
8 opposing points and authorities, and having heard and considered the arguments of counsel, and good
9 cause appearing, finds and orders that Defendants' Motion to Dismiss is GRANTED.

10 IT IS HEREBY ORDERED THAT:

11 1. Plaintiffs' First Claim is dismissed without leave to amend on the grounds that:

12 (a) the Due Process Clause of the United States Constitution does not
13 require the Controller to search through multiple government databases to find addresses for owners of
14 unclaimed property to use for pre- or post-escheat direct mail notice or when the Controller's pre-
15 escheat direct mail notice is returned unopened;

16 (b) the Due Process Clause of the United States Constitution does not
17 require the State of California to provide a minimum level of funding or minimum staffing level for the
18 Controller's Locator Unit;

19 (c) an alleged pecuniary interest on the part of a private corporation that has
20 contracted with the Controller's Office to design an automated notice system does not state a claim for
21 a violation of the Due Process Clause of the United States Constitution; and

22 (d) the Due Process Clause of the United States Constitution does not
23 require the Controller to provide more notice to the apparent owners of unclaimed property valued at
24 less than \$50 than the notice he provides to such owners.

25 2. Plaintiffs' Second Claim is dismissed without leave to amend on the grounds
26 that:

27 (a) the Due Process Clause of the United States Constitution does not
28 require the Controller to search through multiple government databases to find addresses for owners of

1 unclaimed property to use for pre- or post-escheat direct mail notice or when the Controller's pre-
2 escheat direct mail notice is returned unopened;

3 (b) the Due Process Clause of the United States Constitution does not
4 require the State of California to provide a minimum level of funding or minimum staffing level for the
5 Controller's Locator Unit;

6 (c) an alleged pecuniary interest on the part of a private corporation that has
7 contracted with the Controller's Office to design an automated notice system does not state a claim for
8 a violation of the Due Process Clause of the United States Constitution; and

9 (d) the Due Process Clause of the United States Constitution does not
10 require the Controller to provide more notice to the apparent owners of unclaimed property valued at
11 less than \$50 than the notice he provides to such owners.

12 3. Plaintiffs' Third Claim is dismissed without leave to amend on the grounds that:

13 (a) plaintiffs have failed to state a claim for a violation of any right under the
14 Due Process Clause of the United States Constitution based on the Controller's alleged failure to
15 provide post-escheat remedies other than those provided by section 1540 of the Code of Civil
16 Procedure;

17 (b) plaintiffs have no federal right to a jury trial in civil cases in state court;

18 (c) plaintiffs have no federal right to a minimum statute of limitations to
19 bring suit in state court; and

20 (d) the Eleventh Amendment of the United States Constitution bars claims
21 based on the defendants' alleged failure to comply with state law.

22 4. Plaintiffs' Fourth Claim is dismissed without leave to amend on the ground that
23 the Eleventh Amendment of the United States Constitution bars claims that are based on the
24 defendants' alleged failure to comply with state law.

25 5. Plaintiffs' Fifth Claim is dismissed without leave to amend on the ground that
26 plaintiffs have failed to allege that the Controller provides less notice than that which is required by the
27 United States Constitution, for the following reasons:

1 (a) the Due Process Clause of the United States Constitution does not
2 require the Controller to search through multiple government databases to find addresses for owners of
3 unclaimed property to use for pre- or post-escheat direct mail notice or when the Controller's pre-
4 escheat direct mail notice is returned unopened;

5 (b) the Due Process Clause of the United States Constitution does not
6 require the State of California to provide a minimum level of funding or minimum staffing level for the
7 Controller's Locator Unit;

8 (c) an alleged pecuniary interest on the part of a private corporation that has
9 contracted with the Controller's Office to design an automated notice system does not state a claim for
10 a violation of the Due Process Clause of the United States Constitution;

11 (d) the Due Process Clause of the United States Constitution does not
12 require the Controller to provide more notice to the apparent owners of unclaimed property valued at
13 less than \$50 than the notice he provides to such owners;

14 (e) the Due Process Clause of the United States Constitution does not
15 require the Controller to publish the names of the apparent owners of unclaimed property in the
16 newspaper notices required by the UPL;

17 (f) the Due Process Clause of the United States Constitution does not
18 require the Controller to provide additional notice to unclaimed property owners who are foreign
19 nationals; and

20 (g) plaintiffs have failed to state a claim for a violation of any right under the
21 Due Process Clause of the United States Constitution based on the Controller's alleged failure to
22 provide post-escheat remedies other than those provided by section 1540 of the Code of Civil
23 Procedure.

24 6. Plaintiffs' Sixth Claim is dismissed without leave to amend on the ground that
25 the Eleventh Amendment of the United States Constitution bars claims that are based on the
26 defendants' alleged failure to comply with state law and prohibits plaintiffs from seeking damages in
27 the form of restitution from the State.

1 7. Plaintiffs' Seventh Claim is dismissed without leave to amend on the grounds
2 that:

3 (a) *Taylor v. Westly*, 402 F.3d 924 (9th Cir. 2005) ("*Taylor I*") and *Suever v.*
4 *Chiang*, 579 F.3d 1047 (9th Cir. 2009) ("*Suever II*") foreclose the claim that the transfer and/or sale of
5 property under the UPL violate the Fifth Amendment of the United States Constitution; and

6 (b) the State does not owe compensation to the owners of unclaimed
7 property of no commercial value that is destroyed pursuant to the provisions of the UPL, which were
8 upheld in *Taylor v. Westly*, 525 F.3d 1288 (9th Cir. 2008) ("*Taylor III*").

9 8. Plaintiffs' Eighth Claim is dismissed without leave to amend on the ground that
10 the Eleventh Amendment of the United States Constitution bars claims that are based on the
11 defendants' alleged failure to comply with state law.

12 9. Plaintiffs' Ninth Claim is dismissed without leave to amend on the ground that
13 plaintiffs have failed to state a claim under the Contracts Clause of the United States Constitution.

14 10. Plaintiffs' Tenth Claim is dismissed without leave to amend on the ground that
15 the Eleventh Amendment of the United States Constitution bars claims that are based on the
16 defendants' alleged failure to comply with state law.

17 11. Plaintiffs' Eleventh Claim is dismissed without leave to amend on the grounds
18 that:

19 (a) the federal securities laws do not preempt the UPL; and

20 (b) the UPL does not interfere with rights protected by the federal securities
21 laws.

22 12. Plaintiffs' Twelfth Claim is dismissed without leave to amend on the ground that
23 the Eleventh Amendment of the United States Constitution bars claims that are based on the
24 defendants' alleged failure to comply with state law.

25 13. Plaintiffs' Thirteenth Claim is dismissed without leave to amend on the grounds
26 that:

27 (a) the Due Process Clause of the United States Constitution does not
28 require the Controller to search through multiple government databases to find addresses for owners of

1 unclaimed property to use for pre- or post-escheat direct mail notice or when the Controller's pre-
2 escheat direct mail notice is returned unopened;

3 (b) plaintiffs have failed to state a claim for a violation of any right under the
4 Due Process Clause of the United States Constitution or 42 U.S.C. section 1983 based on the
5 Controller's alleged failure to take additional steps to provide notice to the apparent owners of
6 unclaimed property;

7 (c) plaintiffs have failed to state a claim for a violation of any right under the
8 Due Process Clause of the United States Constitution or 42 U.S.C. section 1983 based on the
9 Controller's alleged failure to provide post-escheat remedies other than those provided by section 1540
10 of the Code of Civil Procedure;

11 (d) plaintiffs have failed to state a claim for a violation of 42 U.S.C.
12 section 1983 for taking property from owners of unclaimed property without just compensation;

13 (e) plaintiffs have failed to state a claim for a violation of any right under the
14 Fifth Amendment or Due Process Clause of the United States Constitution, or the Civil Rights Act
15 of 1871, based on the Controller's alleged use of outside auditors;

16 (f) plaintiffs have failed to state a claim for a violation of any right under the
17 Contracts Clause of the United States Constitution; and

18 (g) plaintiffs have failed to state a claim for a violation of any right under the
19 Fifth Amendment or Due Process Clause of the United States Constitution based on an alleged
20 pecuniary interest on the part of the private corporation that has contracted with the Controller's Office
21 to design an automated notice system.

22 14. Plaintiffs' Fourteenth Claim is dismissed without leave to amend on the ground
23 that plaintiffs have won no relief entitling them to attorneys' fees or the creation of a common fund.

24 IT IS SO ORDERED.

25 DATED: 11-14-2012

26
27 THE HONORABLE JOHN MENDEZ
28 UNITED STATES DISTRICT COURT JUDGE

(00181827-5)